

**Stipulated Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 03-02323

Edward and Norma Japalucci, Joint Account;  
Edward and Norma Japalucci, Trust;  
Chase Beezer Custodial Account;  
Edward Japalucci; Norma Japalucci;  
Edward Japalucci IRA; and, Norma  
Japalucci IRA

Names of the Respondents

Hearing Site: Boca Raton, Florida

Empire Financial Group, Inc. and  
Richard A. Bucher

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**REPRESENTATION OF PARTIES**

For Edward and Norma Japalucci, Joint Account; Edward and Norma Japalucci, Trust; Chase Beezer Custodial Account; Edward Japalucci; Norma Japalucci; Edward Japalucci IRA; and, Norma Japalucci IRA, hereinafter collectively referred to as "Claimants": S. Jeffrey Greenwald, Esq., Law Offices of S. Jeffrey Greenwald, Palm Beach, Florida.

For Empire Financial Group, Inc. ("Empire") and Richard A. Bucher ("Bucher"), hereinafter collectively referred to as "Respondents": William M. Rishoi, Esq. and Philip J. Snyderburn, Esq., Snyderburn, Rishoi & Swann, Orlando, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: April 1, 2003.

Claimants signed the Uniform Submission Agreement: April 13, 2003.

Respondent Empire's Answer to Statement of Claim and Defenses filed on or about: June 10, 2003.

Respondent Empire signed the Uniform Submission Agreement: May 29, 2003.

Respondent Bucher's Answer to Statement of Claim filed on or about: September 16, 2003.

Amendment to Statement of Claim filed on or about: September 18, 2003.

Respondent Bucher did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; breach of fiduciary duty; negligent supervision; respondeat superior; negligence; breach of the NASD's Rules of Fair Practice; and, breach of the rules of the NYSE. The causes of action relate to the purchase and sale of various securities products in Claimants' accounts including, but not limited to:

multiple Best of America variable annuities; a ValueMark IV variable annuity; a US Allianz variable annuity; shares of 3Com stock; shares of MCI stock; shares of Razorfish stock; shares of Work Flow Management stock; shares of K-Mart stock; and, shares of Console Energy stock.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$139,000.00, disgorgement of commissions, rescission of all annuity transactions in Claimants' accounts, benefit of the bargain damages, punitive damages, pre- and post-judgment interest, costs and such other relief as the Panel deemed just and proper.

Respondents requested dismissal of the Statement of Claim, costs and expungement of all references to the above-captioned arbitration from Respondents' registration records maintained by the NASD Central Registration Depository ("CRD").

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Bucher did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and is bound by the determinations of the Panel on all issues submitted.

On or about August 15, 2003, prior to the appointment of the Panel in this matter, the parties notified NASD Dispute Resolution that this matter had settled. In addition, the parties submitted a proposed Stipulated Award with a request that the Panel enter the Stipulated Award directing the expungement of all references to this matter from Respondent Empire's NASD CRD records.

On or about September 2, 2003, the Panel was appointed to this matter for the purpose of entering the proposed Stipulated Award.

On or about September 16, 2003, Respondent Bucher notified NASD Dispute Resolution that he agreed to be added as a party to this matter for the purpose of entry of the Stipulated Award expunging this matter from Respondent Bucher's registration records maintained by the NASD CRD. In addition, Respondent Bucher joined in the Statement of Answer previously filed by Respondent Empire.

On or about September 18, 2003, Claimants filed an Amendment to the Statement of Claim which added Respondent Bucher as a party for the purpose of entry of the Stipulated Award.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the proposed Stipulated Award and the record in this matter, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants have entered into a settlement agreement with Respondent Empire. All claims against Respondent Empire are dismissed with prejudice;

The Panel recommends the expungement of all references to the above captioned arbitration from Respondents Empire and Bucher's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Empire and Bucher must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive;

The parties shall bear their respective costs and attorneys' fees; and,

Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00

#### **Adjournment Fees**

No requests for adjournments were filed in this matter.

#### **Injunctive Relief Fees**

No injunctive relief fees were incurred in this matter.

#### **Forum Fees and Assessments**

No forum fees were incurred in this matter.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

No administrative costs were incurred in this matter.

### **FEE SUMMARY**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
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Total Fees	= \$ 300.00
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Less payments	= \$ 300.00
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Balance Due NASD Dispute Resolution	= \$ 0.00
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Respondent Empire is solely liable for:

Member Fees	= \$2,450.00
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Total Fees	= \$2,450.00
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Less payments	= \$2,450.00
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Balance Due NASD Dispute Resolution	= \$ 0.00
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### **ARBITRATION PANEL**

Stuart K. Furman	-	Public Arbitrator, Presiding Chair
John F. Morack, Ph.D.	-	Public Arbitrator
Suzanne E. Mowry	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

09/28/03

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Stuart K. Furman  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

/s/

09/29/03

\_\_\_\_\_  
John F. Morack, Ph.D.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

/s/

10/03/03

\_\_\_\_\_  
Suzanne E. Mowry  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

10/03/03

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Date of Service (For NASD Dispute Resolution office use only)

**Concurring Arbitrators' Signatures**

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Stuart K. Furman  
Public Arbitrator, Presiding Chair

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Signature Date



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John F. Morack, Ph.D.  
Public Arbitrator

9/29/03

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Signature Date

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Suzanne E. Mowry  
Non-Public Arbitrator

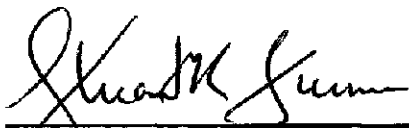
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Signature Date

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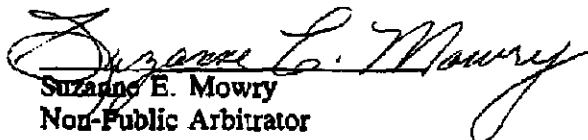
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10-3-03  
Signature Date

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